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**UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

EUNICE JOHNSON, individually, on  
behalf of all others similarly situated, and  
the general public,

Plaintiff,

v.

TRIPLE LEAF TEA INC.;

Defendant.

CASE NO.:  
CLASS ACTION

**COMPLAINT FOR:**

- 1. VIOLATION OF CALIFORNIA  
CONSUMER LEGAL REMEDIES ACT  
[CIV. CODE §§ 1750, *et seq.*];**
- 2. VIOLATION OF CALIFORNIA  
UNFAIR COMPETITION LAW [BUS. &  
PROF. CODE §§ 17200, *et seq.*];**
- 3. VIOLATION OF CALIFORNIA FALSE  
ADVERTISING LAW [BUS. & PROF.  
CODE §§ 17500, *et seq.*];**
- 4. BREACH OF EXPRESS WARRANTY;**
- 5. BREACH OF THE IMPLIED  
WARRANTY OF MERCHANTABILITY;**

DEMAND FOR JURY TRIAL

1 Plaintiff EUNICE JOHNSON (“Plaintiff”), by and through her attorneys of record,  
 2 brings this action on behalf of herself, all others similarly situated, and the general public  
 3 (“Plaintiff”) against Defendant TRIPLE LEAF TEA INC. (“Triple Leaf” or “Defendant”).  
 4 Plaintiff alleges the following upon their own knowledge, or where there is no personal  
 5 knowledge, upon information and belief and the investigation of her counsel:

### 6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as  
 8 amended by the Class Action Fairness Act of 2005, as a matter in controversy that exceeds  
 9 the sum of \$5,000,000.00, exclusive of costs and interest. On information and belief, more  
 10 than two-thirds of the members of the class are citizens of a state different from the  
 11 Defendant. This Court has supplemental jurisdiction over the state law claims pursuant to  
 12 28 U.S.C. § 1367.

13 2. Personal jurisdiction derives from the fact that Defendant Triple Leaf is  
 14 incorporated in California, maintains its principal place of business in California, and  
 15 conducts business within the State of California and within this judicial district.

16 3. Venue is proper within this district pursuant to 28 U.S.C. § 1391(b)(2)  
 17 because many of the acts and transactions occurred in this district and because Defendant:

18 (i) is authorized to conduct business in this district and has intentionally availed itself  
 19 of the laws and markets within this district through the promotion, marketing, distribution  
 20 and sale of its products in this district;

21 (ii) does substantial business in this district;

22 (iii) advertises to consumers residing in this district; and

23 (iv) is subject to personal jurisdiction in this district.

### 24 **PARTIES**

25 4. On information and belief, at all times relevant to this matter Defendant  
 26 Triple Leaf was a California corporation with its principal place of business located at 20  
 27 Buena Vista Road, South San Francisco, California 94080.

28 5. At all times relevant herein, Defendant Triple Leaf advertised, marketed,

1 distributed, and sold mixtures of botanicals, in tea bags, for the preparation of herbal teas.  
2 In particular, Defendant advertised, marketed and distributed three products, each  
3 comprised of senna leaf and Chinese mallow, which Defendant calls “Dieter’s Green Herbal  
4 Tea,” “Ultra Slim Herbal Tea,” and “Super Slimming Herbal Tea” (together, “Senna Diet  
5 Products” or “Products”), transacting business in this district and throughout the United  
6 States.

7 6. Defendant advertised, marketed and distributed the Senna Diet Products in  
8 several package sizes, iterations and variations to consumers throughout this district, the  
9 state of California and the United States.

10 7. At all times relevant to this matter, Plaintiff Eunice Johnson resided, and  
11 continues to reside, in Turlock, California.

12 8. Members of the putative Class reside in California, and other states in the  
13 United States.

14 9. During the Class period, Plaintiff Eunice Johnson was exposed to and saw  
15 Defendant’s claims about Dieter’s Green tea (the “Product”) on the Product’s packaging,  
16 which claimed, *inter alia*, that the Product was effective for weight-loss. Plaintiff  
17 purchased the Product in reliance on those packaging claims at either a Price Chopper or  
18 Hen House store in the Kansas City, Missouri area, around November of 2012 for  
19 approximately \$3.00, and suffered injury in fact as a result of Defendant’s unfair  
20 competition as described herein.

21 10. Plaintiff are informed and believe and thereon allege that at all times herein  
22 mentioned the Defendant and Defendant’s employees were the agents, servants and  
23 employees of the Defendant, acting within the purpose and scope of that agency and  
24 employment.

### 25 **INTRODUCTORY FACTS**

26 11. This is a consumer protection class action lawsuit on behalf of purchasers of  
27 Triple Leaf brand products marketed by Defendant as “Dieter’s Green Herbal Tea,” “Ultra  
28 Slim Herbal Tea,” and “Super Slimming Herbal Tea” (together, “Senna Diet Products” or

1 “Products”).

2 12. For over ten years, the Senna Diet Products have been and continue to be  
3 marketed by the Defendant, Triple Leaf, as weight loss “teas,” which are claimed to be  
4 “Herbal Dietary Supplement[s]” that “Offer Traditional Herbal Support While Dieting.”  
5 See Exhibits 1 and 2.

6 13. For over ten years, the Senna Diet Products have been and continue to be  
7 marketed by Defendant as a means of losing and managing weight.

8 14. The predominant ingredient in Triple Leaf’s Senna Diet Products, however,  
9 is senna leaf, a source of the dangerous laxative senna. Senna is the generic descriptor of a  
10 heterogenous mixture comprised of highly variable amounts of chemical irritants such as  
11 anthraquinone glycosides, free anthraquinones and di-anthrone glycosides (“sennosides”  
12 designated A, B, C, and D).<sup>1</sup> Among these constituents, sennosides A and B are responsible  
13 for more than 80% of the biological activity of senna leaf<sup>2</sup>, functioning as “stimulant  
14 laxatives” by irritating the intestinal lining.

15 15. Senna is described in the United States Pharmacopeia (“USP”) as a crude  
16 drug used as laxative and cathartic for the treatment of constipation and for bowel  
17 evacuation.<sup>3</sup>

18 16. But Senna can actually thwart weight loss by slowing the metabolism and  
19 causing chronic bloating and constipation. Also, senna may cause abdominal cramps,  
20 nausea, fainting, breathing difficulties, fluctuations in body temperature, diarrhea, and even  
21 organ failure.<sup>4</sup>

22 \_\_\_\_\_  
23 <sup>1</sup> V.E. TYLER *et al.*, PHARMACOGNOSY, 65 (Lea and Febiger, 9th ed., 1988).

24 <sup>2</sup> A. Stoll & B. Becker, *Sennoside A and B, the Active Principles of Senna*, 7  
25 Fortschritte der Chemie Organischer Naturstoffe 248 – 269 (1950).

26 <sup>3</sup> UNITED STATES PHARMACOPEIA 1516-17 (United States Pharmacopeial Convention,  
27 24th ed., 2000).

28 <sup>4</sup> B. Vanderperren *et al.*, *Acute Liver Failure with Renal Impairment Related to the Abuse of Senna Anthraquinone Glycosides*, 39(7-8) Ann. Pharmacotherapy, 1353-57 (2005).

1           17.       Because the Senna Diet Products contain no weight loss ingredients or fat  
2 burners, it is are not an effective treatment for weight loss or appetite suppression and does  
3 not in fact work as advertised. Moreover, Senna does not prevent absorptions of calories  
4 from food, as it acts to stimulate the large intestine and not the small intestine where  
5 nutrient absorption takes place. Accordingly, Senna only effectuates loss of fecal matter  
6 and water from the lower bowels, resulting only in dehydration, loss of vital electrolytes  
7 and, at times, painful cramping.

8           18.       The Senna Diet Products are each labeled as a “Herbal Dietary Supplement”  
9 (see Exhibits 1 and 2). Pursuant to the Dietary Supplement Health and Education Act of  
10 1994 (“DSHEA”), dietary supplements are “foods” for the purposes of the Food, Drug, and  
11 Cosmetic Act (“FDCA”). 21 U.S.C. § 321(ff). Accordingly, the Senna Diet Products are  
12 unlawful misbranded foods where Defendant’s product labeling falsely and misleadingly  
13 recites that they are effective in managing weight. 21 U.S.C. § 343(a).

14           19.       Defendant Triple Leaf conceals from consumers the dangers of consuming its  
15 Senna Diet Products.

16           20.       Defendant primarily advertises and promotes the Senna Diet Products  
17 through labeling claims on the Products’ package. Label descriptions on the Products’  
18 packaging, taken as a whole, clearly indicate what the Products are supposed to do and all  
19 members of the class were exposed to the Products’ labels as depicted herein because  
20 Defendant’s labeling is and was uniform throughout the U.S.

21           21.       Like other members of the class, Plaintiff saw, understood, and relied on the  
22 “Dieter’s Green Tea” Product’s label, including but not limited to: the false or misleading  
23 claims on packages stating that it was a “Dieter’s” tea, offered “Support While Dieting,”  
24 and was derived from “time-tested knowledge” possessed by Defendant. (See Exhibits 1, 2  
25 and 4.)

26           22.       Each of these statements is false and/or misleading because the Product does  
27 not provide the advertised benefits but is, in fact, a laxative.  
28

1           23.       Plaintiff and the class would not have purchased the Products, but for the  
2 Products' deceptive labeling claims.

3           24.       Defendant's marketing and promotion of the Products is supported by false  
4 and misleading claims containing material omissions concerning the Products' efficacy and  
5 supposed mechanism of action. Defendant had a duty to disclose the truth behind the  
6 Products' supposed efficacy and mechanism of action, to correct the deception its partial  
7 disclosure created in minds of consumers.

8           25.       When purchasing the Products, Plaintiff was seeking a product that would  
9 help her lose weight and support her diet efforts, as Defendant promised, represented and  
10 warranted. Moreover, Plaintiff sought a product that was generally healthy, as the  
11 Products' advertising promises a natural means to help lose weight.

12          26.       Plaintiff purchased the Product believing it had the qualities she sought,  
13 based on the Product's deceptive labeling, but the Product was actually unacceptable to her  
14 as it is, in fact, a laxative and not a weight loss aid.

15          27.       Moreover, like all reasonable consumers and members of the class, Plaintiff  
16 considers a label's compliance with federal law a material factor in their purchasing  
17 decisions. Plaintiff is generally aware that the federal government carefully regulates  
18 packaged food products and diet supplements and therefore has come to trust that  
19 information conveyed on these type of products' labels is truthful, accurate, complete, and  
20 fully in accordance and compliance with the law. As a result, Plaintiff trusts she can  
21 compare competing products on the basis of their labeling claims, to make a purchasing  
22 decision.

23          28.       Like all reasonable consumers and members of the class, Plaintiff would not  
24 purchase a product she knew was misbranded under federal law, *see* 21 U.S.C. § 343, which  
25 the federal government prohibits selling, *id.* § 331, and which carries with its sale criminal  
26 penalties, *id.* § 333. Plaintiff could not trust that the label of a product misbranded under  
27 the law is truthful, accurate and complete.

28          29.       Similarly, like all reasonable consumers and members of the class, Plaintiff

1 would not purchase a product she knew was an illegally marketed new drug for which the  
2 FDA has not determined its safety and efficacy.

3 30. In light of the foregoing, reasonable consumers, including Plaintiff and other  
4 members of the class, were and are likely to be deceived by Defendant's advertising and  
5 marketing practices as detailed herein.

6 31. Further, Plaintiff and the Class purchased the Product instead of competing  
7 products based on the false statements and misrepresentations described herein.

8 32. Instead of receiving a product that had the weight loss and diet support  
9 advantages advertised, Plaintiff and the Class received a product worth much less, or which  
10 was worthless, since the Product not only did not work but causes effects opposite to those  
11 advertised.

12 33. Plaintiff and the Class lost money as a result of Defendant's deception in that  
13 Plaintiff did not receive what she had paid for.

14 34. Plaintiff and the Class altered their position to their detriment and suffered  
15 damages in an amount equal to the amount they paid for the Products.

16 35. Plaintiff bring this action on behalf of herself and all other similarly situated  
17 consumers in the United States or, in the alternative, California and states with laws that do  
18 not materially differ from California, to halt the dissemination of Defendant's deceptive and  
19 false advertising message about the Products, to correct the false and misleading perception  
20 it has created in the minds of consumers, and to compensate the Class members wronged by  
21 the Defendant's conduct. Plaintiff alleges violations of the Consumers Legal Remedies Act  
22 (Cal. Civ. Code §§ 1750, *et seq.*, "CLRA"), Unfair Competition Law (Cal. Bus. & Prof.  
23 Code §§ 17200, *et seq.*), False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*),  
24 breach of express warranty, and breach of implied warranty.

### 25 **SPECIFIC FACTUAL ALLEGATIONS**

26 36. Defendant Triple Leaf has used and continues to use labeling, advertising,  
27 and the Internet, to market Dieter's Green Herbal Tea, Ultra Slim Herbal Tea and Super  
28 Slimming Herbal Tea ("Senna Diet Products" or "Products"), which Defendant claims, *inter*



1 *alia*, are “Chinese Medicinals,” which support or assist in dieting and weight loss and are  
 2 derived from “time-tested knowledge” held by Defendant.

### 3 **The Senna Diet Products’ Retail Sales Locations**

4 37. The Senna Diet Products are sold at a variety of retail locations in California  
 5 and across the United States, including Vons markets and the Vitamin Shoppe.

6 38. In addition, Defendant sells the Senna Diet Products online on a variety of  
 7 third-party websites, such as amazon.com, vitaminshoppe.com and vitacost.com.

### 8 **The Composition of the Senna Diet Products**

9 39. The Senna Diet Products, which Defendant purports to be “Herbal Dietary  
 10 Supplements,” consist of “proprietary herbal blends” of botanicals packed into tea bags.  
 11 The predominant ingredient of each of the Products’ proprietary blends is a crude senna leaf  
 12 preparation that contains highly variable amounts of sennosides that act as strong stimulant  
 13 laxatives when consumed after brewing a tea by steeping the product in hot water.

14 40. Each of the Products also contains a second laxative, Chinese mallow,  
 15 referred to by Defendant as “Whorled mallow leaf.” (See Exhibit 3.)

### 16 **Senna is Ineffective for Weight Loss Because it is Active in the Colon and Not in** 17 **the Small Intestine**

18 41. Senna has a laxative effect, but is not a bulk-forming laxative. Bulk-forming  
 19 laxatives are generally considered safe for regular use. See J. Tack *et al.*, “*Diagnosis and*  
 20 *Treatment of Chronic Constipation – a European Perspective*,” 23(8) *Neurogastroenterol*  
 21 *Motil*\_\_\_\_697-710 (August 2011), available at [http://onlinelibrary.](http://onlinelibrary.wiley.com/doi/10.1111/j.1365-2982.2011.01709.x/full)  
 22 [wiley.com/doi/10.1111/j.1365-2982.2011.01709.x/full](http://onlinelibrary.wiley.com/doi/10.1111/j.1365-2982.2011.01709.x/full) (accessed March 4, 2014).

23 42. Senna is a stimulant laxative that stimulates contractions in muscles of the  
 24 colon to increase bowel movements. G. Staumon, *et al.*, “*Sennosides and Human Colonic*  
 25 *Motility*,” 36(Suppl 1) *Pharmacology* 49-56 (1988), abstract available at  
 26 <http://www.ncbi.nlm.nih.gov/pubmed/3285363> (accessed March 3, 2014). Sennosides A  
 27 and B are themselves inactive until broken down into smaller molecules called anthrones by  
 28 means of bacterially-derived enzymes present only in the large intestine (colon). P. De



1 Witte P & L. Lemli, “*The Metabolism of Anthranoid Laxatives*,”  
 2 37 Hepatogastroenterol. 601-605 (1990), *abstract available at*  
 3 <http://www.ncbi.nlm.nih.gov/pubmed/2289777> (accessed March 6, 2014).

4 43. Because of their molecular structure, sennosides A and B are protected  
 5 against hydrolysis by stomach acid as well as breakdown by the enzymes present in the  
 6 small intestine. J. Lemli, “*Metabolism of Sennosides—an Overview*,” 36(Suppl. 1)  
 7 Pharmacol. 126-128 (1988), *abstract available at*  
 8 <http://www.ncbi.nlm.nih.gov/pubmed/3368510> (accessed March 5, 2014.) Senna is thus  
 9 pharmacologically inactive until it reaches the colon, where it stimulates contractions,  
 10 causing soft stools and diarrhea. J. Fioramonti, *et al.*, “*Effect of Sennosides on Colon*  
 11 *Motility in Dogs*,” 36 (Suppl.1) Pharmacol. 23-30 (1988), *abstract available at*  
 12 <http://www.ncbi.nlm.nih.gov/pubmed/3285361> (accessed March 3, 2014) (Senna given  
 13 before meals caused strong coordinated intestinal contractions localized within the colon.).

14 44. The vast majority of nutrients are absorbed in the small intestine by means of  
 15 intestinal villi. The colon, on the other hand, lacks villi, therefore little or no nutrient  
 16 absorption occurs there. As such, real weight-loss cannot occur from Senna because Senna  
 17 acts to stimulate evacuation of the colon (large intestine) and not the small intestine, thus  
 18 permitting absorption of calories from food to continue unabated.

### 19 **The Dangers of Senna**

20 45. **Toxicity.** Senna contains components that are highly toxic. P. Hietala *et al.*,  
 21 “*Laxative Potency and Acute Toxicity of Some Anthroquinone Derivatives, Senna Extracts*  
 22 *and Fractions of Senna Extracts*,” 61 Pharmacol. Toxicol. 153-156 (1987), *abstract*  
 23 *available at* <http://www.ncbi.nlm.nih.gov/pubmed/3671329> (accessed March 6, 2014.)

24 46. **Hepatitis.** Long-term use of Senna may lead to hepatitis. U. Beuers *et al.*,  
 25 “*Hepatitis After Chronic Abuse of Senna*,” 337 Lancet 372-373 (1991).

26 47. **Liver failure.** Excessive use of Senna can cause liver failure. Vandeperren  
 27 *et al.*, “*Acute Liver Failure with Renal Impairment Related to the Abuse of Senna*  
 28 *Antraquinone Glycosides*,” 39 Ann. Pharmacother. 1353-1357 (2005), *abstract available at*

1 <http://www.ncbi.nlm.nih.gov/pubmed/15956233> (accessed March 4, 2014).

2 48. **Arthritis and finger “clubbing.”** When anorexics use Senna habitually,  
3 they may develop enlarged (“clubbed”) fingertips and arthritis, in addition to the other  
4 dangerous side effects of Senna. A.K. Lim *et al.*, “Anorexia Nervosa and Senna Misuse:  
5 Nephrocalcinosis, Digital Clubbing and Hypertrophic Osteoarthropathy,” 188 Med. J.  
6 Australia 121-122 (2008).

7 49. **Cancer.** Senna may cause cancer. B.A. van Gorkom *et al.*, “Review article:  
8 *Anthranoid Laxatives and Their Potential Carcinogenic Effects*,” 13 Alimentary  
9 Pharmacol. & Therapeutics 443-452 (1999), available at  
10 <http://onlinelibrary.wiley.com/doi/10.1046/j.1365-2036.1999.00468.x/full> (accessed March  
11 6, 2014).

12 50. **Laxative Dependency.** Long term chronic use (defined as three or more  
13 times a week for one year or more) of stimulant laxatives such as Senna can result in  
14 damage to the nerves that control normal function of the colon (large intestine); stimulant  
15 laxatives can cause dependence, with a “vicious cycle” of increased use, if the intestinal  
16 muscles “forget” how to work on their own. See J. Joo, *et al.*, “Alterations in Colonic  
17 Anatomy Induced by Chronic Stimulant Laxatives: The Cathartic Colon Revisited,” 6(4) J.  
18 Clin. Gastroenterol. 283-286 (June 1998), abstract available at  
19 <http://www.ncbi.nlm.nih.gov/pubmed/9649012>; see also Fioramonti, *supra* (Morphological  
20 changes in canine colons post-senna administration are consistent with nerve damage.).

21 51. Accordingly, the dangers of Senna are numerous, significant and well-  
22 documented in peer-reviewed scientific literature.

### 23 **Specific Misrepresentations and Deceptive Acts**

24 52. Defendant is fully aware that its Senna Diet Products cause diarrhea;  
25 nevertheless they tout it as means of detoxification of the human body, along with other  
26 false and misleading claims.

#### 27 **a. Product Names**

28 53. Defendant Triple Leaf chose deceptive names for each of its Senna Diet

1 Products, which are prominently displayed on the front labels of the Products (*see* Exhibits  
2 1 and 2) and elsewhere on the Products' retail packaging:

3 a. Dieter's Green. This name misleads consumers to believe this product has  
4 ingredients to help one diet or lose weight because it explicitly states that it is a "Dieter's"  
5 product.

6 b. Ultra Slim. This name misleads consumers to believe this product has ingredients  
7 to help one diet or lose weight as it is formed from the word "Ultra," implying superlative  
8 power plus the word "Slim," which expresses the body type desired by dieters.  
9 Accordingly, this product name falsely implies that it is highly effective for use by persons  
10 desiring to lose weight and become "Slim," whereas in fact Ultra Slim is ineffective for  
11 achieving actual weight reduction.

12 c. Super Slimming. This name misleads consumers to believe this product has  
13 ingredients to help one diet or lose weight as it is formed from the word "Super," implying  
14 superlative power plus the word "Slimming," which expresses the effect desired by dieters.  
15 Accordingly, this product name falsely implies that it is highly effective for use by persons  
16 desiring to lose weight by means of "Slimming," whereas in fact Super Slimming is  
17 ineffective for achieving actual weight reduction.

18 54. Further, the Senna Diet Products falsely and deceptively imply they are  
19 useful for dieting but most diets last substantially longer than the limited time period  
20 beyond which Senna use becomes increasingly dangerous, as set forth herein.

21 **b. Front Labels (Vertical and Horizontal)**

22 55. Defendant Triple Leaf manufactures its retail package with two different  
23 panels of the Products' boxes serving for vertical<sup>5</sup> or horizontal<sup>6</sup> display on store shelves.  
24 (*See* Exhibits 1 and 2.) These front labels carry false and deceptive statements common to  
25 all of Defendant's Senna Diet Products, which are exposed to consumers inspecting the  
26 Senna Diet Products on the shelves of retail stores.

27 <sup>5</sup> *I.e.*, "portrait" mode.

28 <sup>6</sup> *I.e.*, "landscape" mode.

56. Misleading Slogan. Defendant Triple Leaf places on the front labels of the Products, bolded print clearly advertising that each of the Products provides “Herbal Support While Dieting.” However, all three of the Products contains Senna as the predominant ingredient of Defendant’s “proprietary blend of herbs” (*see* Exhibit 3), which is not effective in weight loss and may have an opposite effect and cause bloating and cramping. Further, this claim is also false and deceptive in that most diets last substantially longer than the limited time period beyond which Senna use becomes increasingly dangerous. Far from being supportive, the Products cause severe side effects including laxative dependency when used long-term.

57. Misleading Description. Defendant prominently displays on its front labels that the Products “Helps Promote Cleansing . . .”<sup>7</sup> This description is misleading in that it makes the Product seem as though it has ingredients that will help to flush the body of toxins, when in reality it is predominantly comprised of two laxative ingredients. Toxins can still be taken up in the body through the stomach.

### **c. Bottom Labels**

58. Defendant manufactures its retail package with a bottom panel that is exposed to consumers inspecting the Senna Diet Products on the shelves of retail stores. These bottom labels carry false and deceptive statements common to all of Defendant’s Senna Diet Products. (*See* Exhibit 4.)

59. Misleading Statement. On the bottom labels of the Products, Defendant advertises that “[t]he Chinese system of herbology has been recorded in ancient texts which are studied and employed even today.” This statement is misleading to consumers because even if Senna and Chinese Mallow are described in “ancient texts,” their combination was not described for the purposes Defendant is selling the Products, which is to help people on diets achieve actual weight loss. It is further a false or misleading establishment claim but

<sup>7</sup> On Dieter’s Green, Defendant advertises “Helps Promote Cleansing”; on Ultra Slim, Defendant advertises “Helps Promote Cleansing and Digestion”; on Super Slimming, Defendant advertises “Helps Promote Cleansing and Detoxification.” *See* Exs. 1 & 2.

there is no evidence that senna is scientifically established to achieve or support weight loss, and in fact, repeated use of laxatives is contraindicated for weight loss.

#### **d. Other Misrepresentation and Material Omissions**

60. **Concealment of the dangers of senna.** The dangers of Senna ingestion are well-documented as set forth above.

61. The American Herbal Products Association (AHPA) warns against long-term use of senna leaf,<sup>8</sup> as does the FDA.<sup>9</sup>

62. The State of California has established labeling requirements that supersede the AHPA requirement for products sold in California. All dietary supplements that contain stimulant laxatives, including senna leaf as in Defendant's Products, are required to bear the following label: "NOTICE: This product contains Senna. Read and follow directions carefully. Do not use if you have or develop diarrhea, loose stools, or abdominal pain because Senna may worsen these conditions and be harmful to your health. Consult your physician if you have frequent diarrhea or if you are pregnant, nursing, take medication, or have a medical condition." ("Senna Notice.") Title 17, Cal. Code of Regs. §§ 10200 and 10750; *see also* 21 C.F.R. § 310.545(a)(8); 58 Fed. Reg. 27636, 27640-27641.

63. While the end panel of the Product bears the required Senna Notice in small type (*see* Exhibit 3), the front and sides of the packaging make advertising claims that directly contradict that disclaimer along with the known properties and dangers of repeated or ongoing use of Senna. Accordingly, Defendant's advertising claims are false and misleading in that they conceal the dangers of Senna use.

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<sup>8</sup> AHPA recommends that senna leaf products be labeled, "Do not use this product if you have abdominal pain or diarrhea. Consult a healthcare provider prior to use if you are pregnant or nursing. Discontinue use in the event of diarrhea or watery stools. Do not exceed recommended dose. Not for long-term use." *See* [http://www.ahpa.org/Default.aspx?tabid=224#section\\_stimulant\\_laxativ](http://www.ahpa.org/Default.aspx?tabid=224#section_stimulant_laxativ). (Viewed October 8, 2013.)

<sup>9</sup> P. Kurtzweil, "Dieter's Brews Make Tea Time a Dangerous Affair," *FDA Consumer*, July-August 1997, pp. 6-11.

64. **Concealment of the dangers of Chinese mallow.** Chinese mallow (*Malva verticillata*), another crude botanical with strong laxative effects, is also a major components of the Products' "proprietary herbal blend." (See Exhibit 3.) One of Chinese mallow's major bio-active components is mucilage, which probably functions as a lubricating laxative.<sup>10</sup>

65. In addition to its laxative properties, Chinese mallow is also a diuretic.<sup>11</sup> Use of diuretics without dietary potassium supplements can lead to hypokalemia (low serum potassium), which may cause heart palpitations, fatigue and muscle spasms.<sup>12</sup>

66. In addition to mucilage, Chinese mallow seeds also contain polysaccharides and flavonoids.<sup>13</sup> Some studies indicate anti-complementary activity is present in polysaccharides isolated from Chinese mallow.<sup>14</sup> Suppression of complement may reduce inflammation but may also suppress immune responses, in particular anti-viral immunity.<sup>15</sup> Thus consumption of Chinese mallow could make consumers more vulnerable to influenza and other serious viral health threats.

67. Additionally, Chinese mallow consumption can cause significant drops in serum blood sugar levels. While this property has led some researchers to propose

<sup>10</sup> See Committee on Herbal Medicine Products, ASSESSMENT REPORT ON LINUM USITATISSIMUM L., SEMEN, European Medicines Agency, London (October 25, 2006) (a muscilagenous preparation of dried ripe linseeds exhibited lubricant laxative activity and also increased volume of stool); available at [http://www.ema.europa.eu/docs/en\\_GB/document\\_library/Herbal\\_-HMPC\\_assessment\\_report/2010/01/WC500059156.pdf](http://www.ema.europa.eu/docs/en_GB/document_library/Herbal_-HMPC_assessment_report/2010/01/WC500059156.pdf). (Retrieved January 11, 2014.)

<sup>11</sup> T. Tsarong, TIBETAN MEDICINAL PLANTS, Tibetan Medical Publications, West Bengal (1994).

<sup>12</sup> See <http://www.nlm.nih.gov/medlineplus/ency/article/000479.htm>. (Viewed January 30, 2014.)

<sup>13</sup> Natural Products Research Institute, Seoul National University, MEDICINAL PLANTS IN THE REPUBLIC OF KOREA, World Health Organization, Manila (1998).

<sup>14</sup> M. Tomoda, *et al.*, *Constituents of the Seed of Malva Verticillata. VIII. Smith Degradation of MVS-VI, the Major Acidic Polysaccharide, and Anti-Complementary Activity of Products*, 40(8) Chem. Pharm. Bull. (Tokyo) 2219-21 (1992).

<sup>15</sup> "Complement is one of the first lines of host defence to be faced and countered by viruses as they struggle to establish an infection." P. Lachmann & A. Davies, *Complement and Immunity to Viruses*, 159 Immunol. Rev. 69-77 (October 1997).



1 compounds from Chinese mallow as an anti-diabetic treatment,<sup>16</sup> it makes Chinese mallow  
 2 hazardous to the health of consumers who are already taking conventional diabetes  
 3 medications. In these patients, Chinese mallow can lead to dangerous drops in blood sugar  
 4 (hypoglycemia).<sup>17</sup>

5 68. Accordingly, Defendant's advertising of the Products misleads consumers  
 6 where it does not warn them against the dangers of Chinese mallow in that the consumption  
 7 of teas made from crude preparations of Chinese mallow cannot be considered safe for  
 8 consumers.

### 9 **Defendant's Constructive and Actual Knowledge**

10 69. Notwithstanding Defendant's false and deceptive weight-loss claims, FDA has  
 11 approved Senna for use as a "digestive aid" only. See 21 C.F.R. § 310.545 (8)(ii); see also  
 12 63 Fed. Reg. 33592 (June 19, 1998) (grouping Senna with other stimulant laxatives).  
 13 Accordingly, Defendant is charged with constructive knowledge that the only proper claims  
 14 for Senna-containing products are as laxatives. Moreover, Defendant has demonstrated  
 15 actual knowledge that Senna is properly claimed as a laxative by Defendant's marketing of  
 16 its "Herbal Laxative" product (see Exhibit 5) which also contains the same active  
 17 ingredient, Senna, as contained in Defendant's Senna Diet Products.

### 18 **Exceptions to Statutes of Limitations**

19 70. **Fraudulent concealment.** At all relevant times, and as far back as 1998,  
 20 Defendant was both constructively and actually aware that Senna was approved by the FDA  
 21 for use as a "digestive aid" and as a laxative, and not for weight loss. See 21 C.F.R. §  
 22 310.545(8)(ii); see also 63 Fed. Reg. 33592 (June 19, 1998). Therefore, at all relevant  
 23 times Defendant had a duty to inform consumers that the Senna Diet Products were  
 24

25 <sup>16</sup>Y. Jeong & C. Song, *Antidiabetic Activities of Extract from Malva Verticillata Seed*  
 26 *Via the Activation of AMP-Activated Protein Kinase*, 21(9) J. Microbiol. Biotechnol.  
 27 921-29 (2011).

28 <sup>17</sup> See <http://www.webmd.com/vitamins-supplements/ingredientmono-1150-CHINESE%20MALLOW.aspx>. (Viewed January 15, 2014.)



laxatives and were ineffective and not approved for weight loss, but Defendant knowingly concealed that fact from members of the putative class herein. Accordingly, the fraudulent concealment exception tolls the statute of limitations on all claims herein.

71. **Delayed discovery.** Additionally, or in the alternative, because the Senna Diet Products recited Defendant's false and misleading claims, members of the class could not discover, nor had reason to discovery that the Senna Diet Products were ineffective and not approved for weight loss, and the delayed discovery exception postpones accrual of the limitations period for all members of the putative class.

72. **Continuing violation.** Additionally, or in the alternative, because Defendant's misrepresentations and deception continues up to the present, the continuing violation exception tolls all applicable statutes of limitations for all members of the putative class until Defendant's unlawful advertising and labeling is corrected.

### **Sherman Law Allegations**

73. Sherman Food, Drug, and Cosmetic Law ("Sherman Law," located at Cal. Health & Safety Code §§ 109875-111915). The Sherman Law is explicitly authorized by the federal Food, Drug, and Cosmetic Act ("FDCA"). 21 U.S.C. § 343-1.

74. The Sherman Law imposes identical requirements to the federal FDCA, including the FDCA's food labeling requirements. See Cal. Health & Safety Code § 110100.

75. Under the FDCA and the Sherman Law, dietary supplements such as the Senna Diet Products are classified as "foods." 21 U.S.C. § 321(ff). A food shall be deemed to be misbranded if its labeling is false or misleading in any particular. 21 U.S.C. § 343(a); Cal. Health & Safety Code § 110660.

76. A dietary supplement is a product that contains a dietary ingredient, such as a vitamin, mineral or herb, which is intended to supplement the diet. 21 U.S.C. § 324(ff)(1)(C). Diet supplements, however, are also misbranded if their labeling is false or misleading in any particular.

77. Language uniformly present on the Products claims that each of the Products

1 “provides herbal support while dieting.” See Exhibits 1 & 2. The most prominent  
 2 structure/function claims on Defendant’s packaging are inherent in the names of the Senna  
 3 Diet Products themselves: Dieter’s Green, Ultra Slim and Super Slimming, in and of  
 4 themselves and taken together with the “herbal support while dieting” claim all constitute  
 5 claims that the Senna Diet Products are effective for weight loss or long-term sustained  
 6 weight loss, i.e., claims that the Products alter the structure or function of the human body.

7 78. Notwithstanding Defendant’s claims, Senna does not effectuate actual weight  
 8 loss, for the reasons set forth elsewhere herein, i.e., because it effectuates evacuation of the  
 9 lower bowel only, without interfering with nutrient (and calorie) absorption that occurs  
 10 exclusively in the small intestine. Thus any weight lost by the user is temporary and  
 11 attributable to loss of fecal material due to loose stools caused by Senna and loss of fluids  
 12 caused by Senna’s diuretic effects.

13 79. Accordingly, the weight-loss structure/function claims recited on the  
 14 packaging of the Senna Diet Products are false and misleading, and the Products are  
 15 unlawful misbranded foods and diet supplements as set forth above. 21 U.S.C. § 321(ff);  
 16 21 U.S.C. § 343(a); Cal. Health & Safety Code § 110660.

17 80. The Products’ packages all recite claims of “Support While Dieting” and  
 18 prominently display product names (Dieter’s Green, Ultra Slim and Super Slimming) that  
 19 constitute claims that the Products are effective for weight management. These claims are  
 20 false and misleading as set forth herein.

21 81. These false and misleading claims make the Products, and each of them,  
 22 misbranded foods under the FDCA, which are accordingly unlawful under the California  
 23 Sherman Law. *Id.*; Cal. Health & Safety Code §§ 110100, 110105, 110110, 110111.

#### 24 **Reliance and Injury**

25 82. Defendant’s marketing and promotion of Dieter’s Green Herbal Tea, Ultra  
 26 Slim Herbal Tea, and Super Slimming Herbal Tea (“Senna Diet Products” or “Products”)  
 27 was supported by false and misleading claims containing material omissions and  
 28 misrepresentations.

1           83.       When purchasing the Products, Plaintiff and the class were seeking products  
2 that would provide the benefits, and possessed the efficacy and characteristics, as Defendant  
3 marketed, promised, represented and warranted.

4           84.       Plaintiff read and relied on the following deceptive claims by Defendant  
5 concerning the Products:

- 6           • “Dieter’s Green Tea”
- 7           • “Herbal Support While Dieting”
- 8           • “The Chinese system of herbology has been recorded in ancient texts which are  
9 studied and employed even today.”
- 10          • “time-tested knowledge . . . passed down from generation to generation over the  
11 centuries.”

12          85.       Each of these statements is false and/or misleading for the reasons set forth  
13 herein and Defendant’s marketing and promotion is misleading, false, and contains material  
14 omissions concerning the Product’s efficacy and supposed mechanism of action.

15          86.       Plaintiff and the class purchased the Products believing they had the qualities  
16 they sought, based on the Products’ deceptive labeling and marketing, but the Products were  
17 actually unacceptable to them as they did not possess the benefits, efficacy, and  
18 characteristics advertised.

19          87.       In purchasing the Products, Plaintiff and members of the putative class  
20 reasonably relied upon the various representations Defendant made on the Products’  
21 packaging and its prevalent advertising campaign, including online advertising, as described  
22 herein.

23          88.       At all times relevant herein, Defendant had a duty to disclose additional  
24 and/or complete, accurate information to purchasing consumers, to correct all  
25 misunderstandings its omissions and misrepresentations created in the minds of those  
26 consumers.

27          89.       Absent the misrepresentations and omissions described herein, which were  
28 and are material to the average consumer, Plaintiff and class members would not have

1 purchased the Products.

2 90. When purchasing the Products, Plaintiff and Class members were seeking  
3 products that would provide the benefits and had the endorsements, proof of efficacy, and  
4 characteristics that Defendant marketed, promised, represented and warranted.

5 91. Plaintiff and Class members purchased the Products believing they had the  
6 qualities represented on the Products' labeling, but the Products were actually unacceptable  
7 to them, as they did not possess the benefits, endorsements, proof, and characteristics as  
8 advertised.

9 92. Moreover, like all reasonable consumers and members of the Class, Plaintiff  
10 consider a label's compliance with federal law a material factor in their purchasing  
11 decisions. Plaintiff is generally aware the federal government carefully regulates OTC  
12 products and therefore have come to trust that information conveyed on packaged OTC  
13 product labels is truthful, accurate, complete, and fully in accordance and compliance with  
14 the law. As a result, Plaintiff trusts she can compare competing products on the basis of  
15 their labeling claims, to make a purchasing decision.

16 93. Like all reasonable consumers and members of the Class, Plaintiff would not  
17 purchase an OTC product she knew was misbranded under federal law (21 U.S.C. § 352)  
18 which the federal government prohibits selling (§ 331), and which carries with its sale  
19 criminal penalties (§ 333). *See also* Cal. Health & Safety Code §§ 110100, 110105,  
20 110110, 110111. Plaintiff could not trust that the label of a product misbranded under  
21 federal law is truthful, accurate and complete. In fact, the Defendant was promoting the  
22 Products in violation of the FDCA, making the Products misbranded under California's  
23 Sherman Law.

24 94. Similarly, like all reasonable consumers and Class members, Plaintiff would  
25 not purchase an OTC product they knew was an illegally marketed new drug for which the  
26 FDA has not determined its safety and efficacy.

27 95. In light of the foregoing, reasonable consumers, including Plaintiff and other  
28 Class members, were and are likely to be deceived by Defendant's advertising and

1 marketing practices as detailed herein.

2 96. Plaintiff and the Class will be exposed to the Products' false, deceptive, and  
3 unlawful labeling claims in the future when they visit a retail store for weight management  
4 products unless Defendant agrees, or is enjoined, to change the Products' labeling in  
5 response to Plaintiff's claims as set forth herein and in Plaintiff's notice letters.

6 97. Plaintiff and other Class members purchased the Products instead of  
7 competing products based on the false statements, misrepresentations and omissions  
8 described herein.

9 98. Instead of receiving a product that had the benefits, advantages,  
10 endorsements, proof, and characteristics as advertised, Plaintiff and other Class members  
11 received a product worth much less, or which was worthless, since the Products do not  
12 work; causes no effect or effects reverse of that advertised; and did not possess the  
13 characteristics, benefits, endorsements, and proof of efficacy, as advertised by Defendant.

14 99. At all times relevant herein, Defendant had a duty to disclose additional  
15 information to purchasing consumers, to correct all misunderstandings their omissions and  
16 misrepresentations created in the minds of those consumers.

17 100. Absent the misrepresentations and omission described herein, which were  
18 and are material to an average consumer, Plaintiff and other consumers would not have paid  
19 what they did for the Products.

20 101. Plaintiff and the Class lost money as a result of Defendant's deception in that  
21 Plaintiff and the Class did not receive what they had paid for.

22 102. Plaintiff and the Class altered their position to their detriment and suffered  
23 damages in an amount equal to the amount they paid for the Products over the class period.

24 **CLASS ACTION ALLEGATIONS**

25 103. Plaintiff brings this action on behalf of herself and all others similarly  
26 situated (the "Class") in accordance with Rule 23(a), (b)(2), and (b)(3) of the Federal Rules  
27 of Civil Procedure and seeks certification of the following Class against Defendant:

28 All persons who purchased, on or after April 4, 2010 Defendant's Senna Products (in

1 all packaging sizes and iterations) in the United States for personal or household use.  
2 Excluded from the Class are Defendant, its employees, parents, subsidiaries, affiliates,  
3 officers and directors, and those who purchased the Products for the purpose of resale.

4 *Or, in the alternative,*

5 All persons who purchased, on or after April 4, 2010 Defendant's Senna Products (in  
6 all packaging sizes and iterations) in California and states with laws similar to California,  
7 for personal or household use. Excluded from the Class are Defendant, its employees,  
8 parents, subsidiaries, affiliates, officers and directors, and those who purchased the Products  
9 for the purpose of resale.

10 104. The proposed Class is so numerous that individual joinder of all its members  
11 is impracticable. Due to the nature of the trade and commerce involved, however, Plaintiff  
12 believes the total number of Class members is at least in the tens of thousands of persons in  
13 the State of California and in the hundreds of thousands of persons in the United States.  
14 While the exact number and identities of the Class members are unknown at this time, such  
15 information can be ascertained through appropriate investigation, discovery or Class  
16 definition. The disposition of the claims of the Class members in a single class action will  
17 provide substantial benefits to all parties and to the Court.

18 105. Pursuant to Rule 23(b)(2), Defendant has acted or refused to act on grounds  
19 generally applicable to the Class, thereby making final injunctive relief or corresponding  
20 declaratory relief and damages as to their Products appropriate with respect to the Class as a  
21 whole. Retrospective injunctive relief would seek a recall of the Products' false, deceptive  
22 and unlawful labeling and benefit the Class equally and as a whole. Prospective injunctive  
23 relief would ensure that Class members are only exposed to lawful, truthful and non-  
24 misleading advertising of the Products in the future, which will also benefit each member of  
25 the Class in equal but indivisible measure. In particular, Defendant has misrepresented or  
26 failed to disclose the true nature of the Products being marketed and distributed, as detailed  
27 herein, through misrepresentations and omissions on the labeling, by which Defendant acted  
28 and refused to act on grounds generally applicable to the Class as a whole.

1           106.     There is a well-defined community of interest in the questions of law and fact  
2 involved affecting the Plaintiff and the Class and these common questions of fact and law  
3 include, but are not limited to, the following:

4           107.     Questions of law and fact common to Plaintiff and the Class include:

5           a. Whether Defendant contributed to, committed, and/or are responsible for the  
6 conduct alleged herein;

7           b. Whether Defendant's conduct constitutes the violations of law alleged herein;

8           c. Whether Defendant acted willfully, recklessly, negligently, or with gross  
9 negligence in the violations of law alleged herein; and

10          d. Whether Class members are entitled to compensatory, injunctive, and other  
11 equitable relief.

12          108.     By purchasing Defendant's Products, all Class members were subjected to  
13 the same wrongful conduct.

14          109.     Absent Defendant's deceptive claims, Plaintiff and Class members would not  
15 have purchased Defendant's Products.

16          110.     Plaintiff's claims are typical of the Class's claims. Plaintiff will fairly and  
17 adequately protect the interests of the Class, have no interests that are incompatible with the  
18 interests of the Class, and have retained counsel competent and experienced in class  
19 litigation.

20          111.     The Class is sufficiently numerous, as it includes thousands of individuals  
21 who purchased Defendant's Products throughout the United States during the Class Period.

22          112.     Class representation is superior to other options for the resolution of the  
23 controversy. The relief sought for each Class member is small. Absent the availability of  
24 class action procedures, it would be infeasible for Class members to redress the wrongs  
25 done to them.

26          113.     Defendant has acted on grounds applicable to the Class, thereby making  
27 appropriate final injunctive relief or declaratory relief concerning the Class as a whole.

28          114.     Questions of law and fact common to the Class predominate over any



1 questions affecting only individual members.

2 115. Class treatment is appropriate under FRCP 23(a), and both 23(b)(2) and  
 3 23(b)(3). Plaintiff do not contemplate class notice if the Class is certified under FRCP  
 4 23(b)(2), which does not require notice. Plaintiff contemplates notice via publication if the  
 5 Class is certified under FRCP 23(b)(3) or if the Court determines Class notice is required  
 6 notwithstanding that notice is not required under FRCP 23(b)(2). Plaintiff will, if notice is  
 7 required, confer with Defendant and seek to present the Court with a stipulation and  
 8 proposed order on the details of a Class notice plan.

### 9 **CAUSES OF ACTION**

#### 10 **FIRST CAUSE OF ACTION**

#### 11 **For Violations of the Consumers Legal Remedies Act**

#### 12 **Civil Code §§ 17500, et seq.**

#### 13 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

14 116. Plaintiff repeat, re-allege and incorporate by reference each and every  
 15 allegation contained above as if fully set forth herein.

16 117. At all times relevant herein, there was in full force and effect the Consumers  
 17 Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the “Consumers Legal  
 18 Remedies Act”) and similar deceptive practice acts in other states. Plaintiff are consumers  
 19 as defined by Civil Code § 1761(d). The Products are goods within the meaning of Civil  
 20 Code § 1761(a).

21 118. Defendant violated and continues to violate the Consumers Legal Remedies  
 22 Act by engaging in the following practices proscribed by § 1770(a), in transactions with  
 23 Plaintiff and the Class which were intended to result in, and did result in, the sale of the  
 24 Products:

25 (a) Advertising that the Products are effective for weight loss when they are not;

26 (b) Representing that the Products have characteristics, uses or benefits which they do  
 27 not have;

28 (c) Representing that the Products are of a particular standard, quality or grade when

1 they are of another;

2 (d) Advertising the Products with intent not to sell them as advertised;

3 (e) Representing that the Products have been supplied in accordance with a previous  
4 representation when they are not;

5 (f) Engaging in conduct that creates a likelihood of confusion or misunderstanding.

6 119. The Defendant's representations amount to false and/or deceptive acts or  
7 practices in violation of the Consumers Legal Remedies Act.

8 120. Defendant's actions described herein similarly violated the consumer  
9 protection statutes in effect in every state in which Defendant or their affiliates do business.

10 121. Defendant violated the Consumers Legal Remedies Act, and similar  
11 provisions in the Consumers Legal Remedies Acts of other jurisdictions within the United  
12 States, by making the representations, claims and nondisclosures for the Products, as  
13 described herein, when it knew, or should have known, that the representations and  
14 advertisements were incomplete, false and misleading.

15 122. Plaintiff and other members of the Class relied upon the Defendant's material  
16 misrepresentations as to the quality and attributes of the Products.

17 123. Plaintiff and other members of the Class were likely to be deceived by  
18 Defendant's representations about the quality and attributes of the Products, including but  
19 not limited to the purported ability of the Senna Diet Products to cause weight loss.

20 124. Plaintiff and other Class members would not have purchased the Products  
21 had they known Defendant's claims were misleading, unfounded or untrue, and the true  
22 nature of the Products, causing them injury in fact in the form of the lost purchase price for  
23 the Products.

24 125. Pursuant to section 1782 *et seq.* of the Consumers Legal Remedies Act,  
25 Plaintiff Johnson notified Defendant in writing by certified mail of the particular violations  
26 of § 1770 of the Act as to the Product and demanded that Defendant rectify the problems  
27 associated with the actions detailed above and give notice to all affected consumers of its  
28 intent to so act. Defendant's wrongful business practices regarding the Product constituted,

1 and constitute, a continuing course of conduct in violation of the Consumers Legal  
 2 Remedies Act since Defendant is still representing that the Product have characteristics,  
 3 uses, benefits, and abilities which are false and misleading, and have injured and continue to  
 4 injure Plaintiff and the Class. A copy of Plaintiff's letter is attached as Exhibit 6 hereto.

5 126. Pursuant to California Civil Code § 1780(a), Plaintiff and the Class seek an  
 6 order of this Court enjoining the Defendant from continuing to engage in unlawful, unfair,  
 7 or deceptive business practices and any other act prohibited by law; awarding Plaintiff and  
 8 the Class restitution and disgorgement; and awarding Plaintiff and the Class damages and  
 9 punitive damages, and attorney's fees and costs.

## 10 **SECOND CAUSE OF ACTION**

### 11 **Violation of California Business & Professions**

#### 12 **Code Section 17200 et seq. (Unfair Competition Law)**

#### 13 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

14 127. Plaintiff repeat, re-allege and incorporate by reference each and every  
 15 allegation contained above as if fully set forth herein.

16 128. Business & Professions Code Section 17200 prohibits any "unlawful, unfair  
 17 or fraudulent business act or practice and unfair, deceptive, untrue or misleading  
 18 advertising." For the reasons discussed above, Defendant has engaged in "unlawful"  
 19 business acts or practices by, among other things, making misrepresentations and omissions  
 20 of material facts, as set forth more fully above, and violating, among other statutes, Civil  
 21 Code §§ 1572, 1573, 1709, 1710, 1711, 1770, Business & Professions Code § 17500, *et*  
 22 *seq.*, Health & Safety Code § 109875, *et seq.*, and the common law.

23 129. The acts, omissions, misrepresentations, practices, and non-disclosures of  
 24 Defendant as alleged herein constitute "unlawful" business acts and practices in that  
 25 Defendant's conduct violates the False Advertising Law, the Consumer Legal Remedies  
 26 Act, and the Sherman Law. Defendant's deceptive statements with regards to their Products  
 27 described herein violate 21 U.S.C. § 343(a), which deems food (including nutritional  
 28 supplements) misbranded when the label contains a statement that is "false or misleading in

any particular”; and Defendant’s conduct is further “unlawful” because it violates the California Sherman Law, see Cal. Health & Safety Code § 109875-111915 (specifically, §§ 110095, 110100, 110105, 110110, 110111, 110115, 110422 *et seq.*, 110660 *et seq.*), which incorporates the identical provisions of the FDCA.

130. Defendant’s actions described herein similarly violated the consumer protection statutes and statutes prohibiting unfair, unlawful or deceptive business acts or practices in effect in every state in which Defendant or their affiliates do business, and the common law of those states.

131. Plaintiff and the Class reserve the right to allege other violations of law which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

132. Defendant’s acts, omissions, misrepresentations, practices and non-disclosures as alleged herein also constitute “unfair” business acts and practices within the meaning of Business & Professions Code Section 17200, *et seq.*, and similar statutory provisions in other jurisdictions within the United States, in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous because the gravity of the conduct outweighs any alleged benefits attributable to such conduct. Plaintiff allege violations of consumer protection, unfair competition and truth in advertising laws resulting in harm to consumers. Plaintiff assert violations of the public policy of engaging in false and misleading advertising, unfair competition and deceptive conduct towards consumers. There were reasonably available alternatives to further Defendant’s legitimate business interests, other than the conduct described herein.

133. Defendant’s claims, nondisclosures and misleading statements, as more fully set forth above, were also false, misleading and/or likely to deceive the consuming public within the meaning of Business & Professions Code Section 17200 as to “fraudulent” conduct, and similar provisions protecting consumers in other jurisdictions within the United States. Defendant’s labeling, website and other advertisements, as described herein,

1 were false, deceptive, and/or likely to deceive a reasonable consumer because Defendant is  
2 marketing weight loss teas and tablets when, in reality, the Products have no weight loss  
3 properties, and/or have less weight loss properties than claimed, and/or because Defendant's  
4 omitted material information from the Products' advertising as described herein, such that if  
5 Plaintiff and members of the Class had known those material facts, they would not have  
6 purchased the Products.

7 134. Plaintiff and the Class were exposed to Defendant's advertising as alleged  
8 herein.

9 135. Defendant's conduct caused and continues to cause substantial injury to  
10 Plaintiff and members of the Class. Plaintiff suffered injury in fact as a result of  
11 Defendant's unfair conduct, in the form of the lost purchase price of the Product, which she  
12 purchased after being exposed to Defendant's advertising statements, as described herein.

13 136. Defendant's conduct caused and continues to cause substantial injury to  
14 Plaintiff and the other members of the Class. Plaintiff and the Class continue to be exposed  
15 to Defendant's false and/or misleading advertising every time they shop for dietary  
16 supplements and encounter Defendant's false or deceptive advertising on store shelves.  
17 Defendant's competitors will also continue to suffer from Defendant's unfair or deceptive  
18 business conduct if injunctive relief is not afforded.

19 137. Defendant has thus engaged in unlawful, unfair and fraudulent business acts  
20 and practices and false advertising, entitling Plaintiff and the Class to injunctive relief  
21 against Defendant, as set forth in the Prayer for Relief.

22 138. Pursuant to Business & Professions Code Section 17203, Plaintiff and the  
23 Class seek an order requiring Defendant to immediately cease such acts of unlawful, unfair  
24 and fraudulent business practices and requiring Defendant to engage in a corrective  
25 advertising campaign.

26 139. Plaintiff and the Class members are likely to be damaged by Defendant's  
27 deceptive trade practices, as Defendant continues to disseminate misleading advertising and  
28 engage in conduct that violates the UCL. Thus, injunctive relief enjoining this deceptive

1 practice is proper.

2 140. Plaintiff and the Class also seek an order for the disgorgement and restitution  
3 of all monies from the sale of Defendant's Products, which were unjustly acquired through  
4 acts of unlawful, unfair, and/or fraudulent competition.

### 5 **THIRD CAUSE OF ACTION**

#### 6 **Violations of California Business and Professions**

#### 7 **Code Section 17500 et seq. (False Advertising Law)**

#### 8 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

9 141. Plaintiff repeats, realleges and incorporates by reference each and every  
10 allegation contained above as if fully set forth herein.

11 142. Plaintiff has standing to pursue this claim as Plaintiff suffered injury in fact  
12 as a result of Defendant's actions as set forth herein. Specifically, prior to the filing of this  
13 action, Plaintiff purchased the Product in reliance upon Defendant's marketing claims.  
14 Plaintiff used the Product as directed, but the Product did not work as advertised, nor  
15 provide any of the promised benefits.

16 143. Defendant's business practices as alleged herein constitute unfair, deceptive,  
17 untrue, and misleading advertising pursuant to California Business and Professions Code  
18 section 17500, *et seq.* because Defendant has advertised their Products in a manner that is  
19 untrue and misleading, or that Defendant knew was untrue or misleading, or omitted  
20 material information from their advertising which Defendant had a duty to disclose.

21 144. Defendant's wrongful business practices have caused injury to Plaintiff and  
22 the Class, in the form of the lost purchase price of the Products. Plaintiff and the Class  
23 purchased the Products after being exposed to Defendant's false or deceptive advertising  
24 claims, as described herein.

25 145. Defendant's conduct caused and continues to cause substantial injury to  
26 Plaintiff and the other members of the Class. Plaintiff and the Class continue to be exposed  
27 to Defendant's false and/or misleading advertising every time they shop for dietary  
28

1 supplements and encounter Defendant's false or deceptive advertising on store shelves.  
 2 Defendant's competitors will also continue to suffer from Defendant's unfair or deceptive  
 3 business conduct if injunctive relief is not afforded.

4 146. Pursuant to section 17535 of the California Business and Professions Code,  
 5 Plaintiff and the Class seek an order of this Court enjoining Defendant from continuing to  
 6 engage in deceptive business practices, false advertising, and any other act prohibited by  
 7 law, including those set forth in this Complaint.

8 147. Plaintiff and the Class also seek an order for the disgorgement and restitution  
 9 of all monies from the sale of Defendant's Products, which were unjustly acquired through  
 10 acts of unlawful, unfair, and/or fraudulent competition.

#### 11 **FOURTH CAUSE OF ACTION**

##### 12 **Breach of Express Warranty**

##### 13 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

14 148. Plaintiff repeats, realleges and incorporates by reference each and every  
 15 allegation contained above as if fully set forth herein.

16 149. On the Products' labels (*see* Exhibits 1 - 4), Defendant expressly warranted  
 17 that the Products were effective, proper, and safe for their intended use. Defendant made  
 18 affirmations of fact or promises, or description of goods, which were "part of the basis of  
 19 the bargain," in that Plaintiff and the Class purchased the Products in reasonable reliance on  
 20 the Products' labeling statements. Cal. Com. Code §2313(1); *see also Zwart v. Hewlett-*  
 21 *Packard Co.*, 2011 WL 3740805 (N.D. Cal., Aug. 23, 2011) (holding that online assertions  
 22 can create warranties). Specifically, Defendant asserted the Product was a "Dieter's Green  
 23 Tea," "Ultra Slim Herbal Tea," and "Super Slimming Herbal Tea" each of which would  
 24 "Offer . . . Herbal Support While Dieting," which constituted express warranties.

25 150. Defendant breached the express warranties with Plaintiff and the Class by not  
 26 selling the Products that provided the benefits described above, and that breach actually and  
 27 proximately caused injury in the form of the lost purchase price for the Products.

28 151. As a result of Defendant's breach of their warranties, Plaintiff and the Class



1 have been damaged in the amount of the purchase price of the Products they purchased.

2 **FIFTH CAUSE OF ACTION**

3 **Breach of Implied Warranty of Merchantability**

4 **Cal. Com. Code §§ 2314(1), 2314(2)(f)**

5 **[On Behalf of Plaintiff and the Class and Against the Defendant]**

6 152. Plaintiff repeats, realleges and incorporates by reference each and every  
7 allegation contained above as if fully set forth herein.

8 153. Defendant, in its sale, marketing and promotion of its Products, and the acts  
9 and omissions as set forth herein, made representations to Plaintiff and the Class in the form  
10 of statements and representations on the Products' labels. *See* Exhibits 1 - 4. Specifically,  
11 Defendant asserted the Product was a "Dieter's Green Tea," "Ultra Slim Herbal Tea," and  
12 "Super Slimming Herbal Tea" each of which would "Offer . . . Herbal Support While  
13 Dieting," which constituted express warranties.

14 154. Plaintiff and the Class purchased the Products manufactured, advertised and  
15 sold by Defendant.

16 155. Defendant is a merchant with respect to the goods of this kind which were  
17 sold to Plaintiff and the Class, and there was in the sale to Plaintiff and other consumers an  
18 implied warranty that those goods were merchantable.

19 156. However, Defendant breached that warranty implied in the sale of goods, in  
20 that the Products did not provide the purported benefits, as set forth in detail herein.

21 157. As a result of Defendant's conduct, Plaintiff and the Class did not receive  
22 goods as impliedly warranted by Defendant to be merchantable in that they did not conform  
23 to the promises and affirmations made on the container or label of the goods.

24 158. Plaintiff and Class have sustained damages as a proximate result of the  
25 foregoing breach of implied warranty in an amount to be determined at trial.

26 **PRAYER FOR RELIEF**

27 Wherefore, Plaintiff, on behalf of herself, all others similarly situated, and the  
28 general public, pray for a judgment against Defendant on each cause of action:

1 A. For an order declaring this action to be a proper Class Action and requiring  
2 Defendant to bear the costs of class notice;

3 B. For an order awarding declaratory and injunctive relief as permitted by law or  
4 equity, including enjoining Defendant from continuing the unlawful practices as set forth  
5 herein;

6 C. For an order awarding restitution and disgorgement of Defendant's revenues to  
7 Plaintiff and the proposed Class members;

8 D. For an order compelling Defendant to engage in a corrective advertising campaign  
9 to inform the public concerning the true nature of the Products;

10 E. For an order awarding damages, and punitive damages, to Plaintiff and the Class  
11 against Defendant, as provided by statute or applicable law;

12 F. For an order awarding attorneys' fees and costs to Plaintiff;

13 G. For an order providing for all other such equitable relief as may be just and proper.

14 **JURY DEMAND**

15 Plaintiff hereby demands a trial by jury on all issues so triable.

16  
17 DATED: April 4, 2014

/s/ Ronald A. Marron  
RONALD A. MARRON

**THE LAW OFFICES OF RONALD A.  
MARRON**

RONALD A. MARRON

SKYE RESENDES

ALEXIS M. WOOD

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

Facsimile: (619) 564-6665

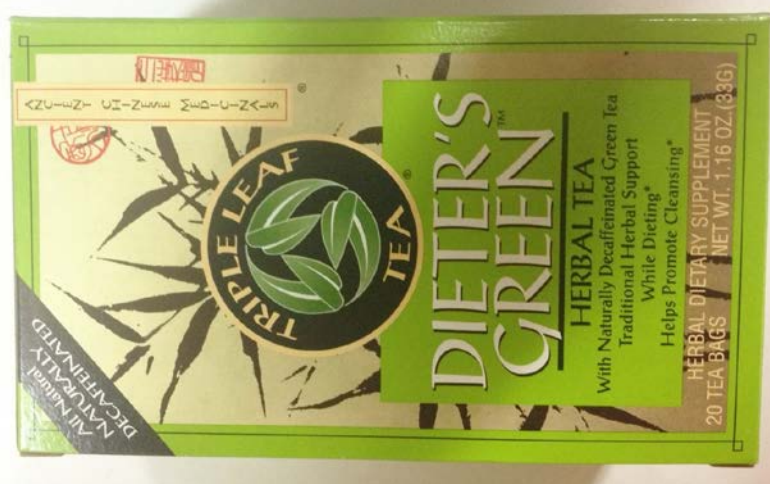
**EXHIBIT 1**

**Triple Leaf Senna Diet Products, Front Panels, Horizontal Orientation**



**EXHIBIT 2**

**Triple Leaf Senna Diet Products, Front Panels, Vertical Orientation**







**EXHIBIT 3****Triple Leaf Senna Diet Products, Side Panels**

<b>Dieter's Green</b>	<b>Ultra Slim</b>																										
 <p><b>Supplement Facts</b> Serving Size 1 tea bag Makes 8 fl oz</p> <table border="1"> <thead> <tr> <th>Amount Per Serving</th> <th>% Daily Value</th> </tr> </thead> <tbody> <tr> <td>Proprietary Blend of Herbs</td> <td>1650 mg</td> </tr> <tr> <td>Senna leaf</td> <td></td> </tr> <tr> <td>Naturally decaffeinated green tea leaf</td> <td></td> </tr> <tr> <td>Whorled mallow leaf</td> <td></td> </tr> <tr> <td>Persimmon leaf</td> <td></td> </tr> </tbody> </table> <p>† Daily Value not established</p> <p><b>NOTE:</b> This tea is not recommended for children, the elderly or sick people, or pregnant women and nursing mothers.*</p> <p><b>NOTICE:</b> This product contains senna leaf. Read and follow directions carefully. Do not use if you have or develop diarrhea, loose stools, or abdominal pain because senna leaf may worsen these conditions and be harmful to your health. Consult your physician if you have frequent diarrhea or if you are pregnant, nursing, taking medication, or have a medical condition.</p>	Amount Per Serving	% Daily Value	Proprietary Blend of Herbs	1650 mg	Senna leaf		Naturally decaffeinated green tea leaf		Whorled mallow leaf		Persimmon leaf		 <p><b>Supplement Facts</b> Serving Size 1 tea bag Makes 8 fl oz</p> <table border="1"> <thead> <tr> <th>Amount Per Serving</th> <th>% Daily Value</th> </tr> </thead> <tbody> <tr> <td>Proprietary Blend of Herbs</td> <td>1650 mg</td> </tr> <tr> <td>Senna leaf</td> <td></td> </tr> <tr> <td>Whorled mallow leaf</td> <td></td> </tr> <tr> <td>Persimmon leaf</td> <td></td> </tr> <tr> <td>Papaya leaf</td> <td></td> </tr> <tr> <td>Loquat leaf</td> <td></td> </tr> </tbody> </table> <p>† Daily Value not established</p> <p><b>NOTE:</b> This tea is not recommended for children, the elderly or sick people, or pregnant women and nursing mothers.*</p> <p><b>NOTICE:</b> This product contains senna leaf. Read and follow directions carefully. Do not use if you have or develop diarrhea, loose stools, or abdominal pain because senna leaf may worsen these conditions and be harmful to your health. Consult your physician if you have frequent diarrhea or if you are pregnant, nursing, taking medication, or have a medical condition.</p>	Amount Per Serving	% Daily Value	Proprietary Blend of Herbs	1650 mg	Senna leaf		Whorled mallow leaf		Persimmon leaf		Papaya leaf		Loquat leaf	
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**EXHIBIT 4****Triple Leaf Senna Diet Products, Bottom Panels****Dieter's Green****TRIPLE LEAF TEA'S ANCIENT CHINESE MEDICINALS**

Traditional Chinese medicine began in approximately 2500 B.C. Recently, here in the West, people have discovered the value of this ancient system which focuses on aiding the body's own healing mechanisms through restoring harmony and balance.\* The Chinese system of herbology has been recorded in ancient texts which are studied and employed even today.\* This time tested knowledge has been passed on from generation to generation over the centuries.\*

Triple Leaf Tea comes from such a tradition.\* It is made in the U.S.A. by a Chinese American family-owned business. The company owner can remember stories of his own grandfather selling herbs and teas in his village in China. Today, these traditional Chinese herbal formulas are available to you.\* We wish you harmony and balance!\*

**Ultra Slim****TRIPLE LEAF TEA'S ANCIENT CHINESE MEDICINALS**

Traditional Chinese medicine began in approximately 2500 B.C. Recently, here in the West, people have discovered the value of this ancient system which focuses on aiding the body's own healing mechanisms through restoring harmony and balance.\* The Chinese system of herbology has been recorded in ancient texts which are studied and employed even today.\* This time tested knowledge has been passed on from generation to generation over the centuries.\*

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**Super Slimming****TRIPLE LEAF TEA'S ANCIENT CHINESE MEDICINALS**

Traditional Chinese medicine began in approximately 2500 B.C. Recently, here in the West, people have discovered the value of this ancient system which focuses on aiding the body's own healing mechanisms through restoring harmony and balance.\* The Chinese system of herbology has been recorded in ancient texts which are studied and employed even today.\* This time tested knowledge has been passed on from generation to generation over the centuries.\*

Triple Leaf Tea comes from such a tradition.\* It is made in the U.S.A. by a Chinese American family-owned business. The company owner can remember stories of his own grandfather selling herbs and teas in his village in China. Today, these traditional Chinese herbal formulas are available to you.\* We wish you harmony and balance!\*

**EXHIBIT 5****Triple Leaf Herbal Laxative Product**



**EXHIBIT 6**

**CLRA Letter**

**LAW OFFICES OF  
RONALD A. MARRON**

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive  
San Diego, CA 92103

Tel: 619.696.9006  
Fax: 619.564.6665

February 21, 2014

**VIA CERTIFIED MAIL (receipt acknowledgment with signature requested)**

Triple Leaf Tea, Inc.  
Attn: Legal Department  
20 Buena Vista Rd  
South San Francisco, CA 94080

Triple Leaf Tea, Inc.  
Agent For Service Of Process  
Vincent Lam  
434 North Canal Street, Unit 5  
South San Francisco, CA 94080

**RE: NOTICE: Violations of the California Consumer Legal Remedies Act and Duty to Preserve Evidence**

Dear Sir or Madam,

**PLEASE TAKE NOTICE** that this letter constitutes notice under the California Consumer Legal Remedies Act, ("CLRA"), California Civil Code Section 1750, *et seq.*, (the "ACT") — pursuant specifically to Civil Code Section 1782 — notifying **Triple Leaf Tea Inc.** (collectively, "YOU" and "YOUR") of violations of the Act and of our demand that YOU remedy such violations within thirty (30) days from your receipt of this letter.

This firm represents Eunice Johnson, who purchased Dieter's Green Tea, (hereafter, the "Product") in either a Price Chopper or Hen House store in the Kansas City, Missouri area, around November of 2012. Ms. Johnson was exposed to and saw YOUR claims about the Product, purchased the Product in reliance on those claims, and suffered injury in fact as a result of YOUR false and misleading advertising.

YOU falsely advertise and market the Product by putting false and misleading claims on the label, including the Product's name itself — "Dieter's Green" — and "Herbal Support While Dieting," which conveys YOUR intended message that the Product is effective for dieter's and in achieving long-lasting weight loss.

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In fact, the Product is nothing more than Chinese Mallow<sup>1</sup>, a laxative (which YOU claim to be a "stimulant laxative") combined with senna leaf ("Senna"), another stimulant laxative. The Product has no weight loss characteristics, it is not effective for weight loss or appetite suppression and therefore does not work as advertised.

Moreover, Chinese ("Whorled") Mallow can cause dangerous drops in blood sugar levels (hypoglycemia) that can trigger life-threatening complications in persons with certain medical conditions such as diabetes.

Senna can actually thwart weight loss by slowing the metabolism and causing chronic bloating and constipation. Also, Senna may cause abdominal cramps, nausea, fainting, breathing difficulties, fluctuations in body temperature and even organ failure.

Further, stimulant laxatives such as Mallow and Senna can lead to dependence, such that a person needs a stimulant laxative in order to have the bowel movements they used to have normally, without the use of a stimulant laxative. Therefore, it is false and misleading to claim that the Product "promote[s] cleansing and digestion" because repeated use retards cleansing and digestion.

Additionally, your suggestion that it is safe for consumers to "gradually increase the strength [of the tea made from the Product]" is misleading, because persons will become dependent upon the Product, as a stimulant laxative, to have a normal bowel movement, resulting in substantial discomfort and the detrimental consequences of severe constipation if use of the Product is discontinued.

The Product also recommends the use of YOUR Detox tea and Super Slimming tea, which are both falsely and deceptively advertised in a similar manner. We further note that the Product's package insert promotes several teas that are unlawful under the federal Food, Drug and Cosmetic Act and California's state law equivalent – the Sherman Law (*see* Cal. Health & Safety Code §§ 109875, *et seq.*), by advertising teas for "Blood Pressure" relief, "Sugar Balance," and "Cholesterid – Helps Maintain Normal Cholesterol Levels." Because these teas (and perhaps others) recommend their use for disease conditions, they are unlawful in the absence of a new drug application. *See, e.g.*, 21 U.S.C. §§ 355(a)-(b); 21 C.F.R. § 101.93(g).

A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed the truth regarding YOUR products or services.

In addition to the violations previously identified, please take further notice that YOUR Product's claims constitute a breach of express and implied warranties. Absent YOUR compliance with YOUR obligations under such warranties and cure of said breach (*see* 15 U.S.C. §§ 2301, *et seq.*), our client intends to pursue a class action with this regard.

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<sup>1</sup> Described in YOUR advertising as "Whorled Mallow."



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In conclusion, YOUR material misrepresentations are deceiving customers into purchasing YOUR Product under the representation the Product provides weight loss and weight management benefits, when in fact it does not.

Please be advised that the alleged unfair methods of competition or unfair or deceptive acts or practices in violation of the CLRA include, but are not necessarily limited to:

§ 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.

§ 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.

§ 1770(a)(9): advertising goods with intent not to sell them as advertised.

§ 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

YOU have failed to honor your consumer protection obligations. Based upon the above, demand is hereby made that YOU conduct a corrective advertising campaign and destroy all misleading and deceptive advertising materials and products.

Please be advised that your failure to comply with this request within thirty (30) days may subject you to the following remedies, available for violations of the CLRA, which will be requested in the class action complaint on behalf of our clients and all other similarly-situated U.S. residents:

- (1) The actual damages suffered;
- (2) An order enjoining you for such methods, acts or practices;
- (3) Restitution of property (when applicable);
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys' fees.

Additionally, I remind you of your legal duty to preserve all records relevant to such litigation. See, e.g., *Convoive, Inc. v. Compaq Computer Corp.*, 223 F.R.D. 162, 175 (S.D.N.Y. 2004); *Computer Ass'n Int'l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and laboratory records that related to the formulation and marketing of YOUR products will be sought in the forthcoming discovery process. You therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling your product account) to preserve all such relevant information.

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In addition, California Civil Code Section 1780 (b) provides in part that: "Any consumer who is a **senior citizen or a disabled person**, as defined in subdivision (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedied specified therein, up to **five thousand dollars (\$5,000)**..." [emphasis added].

I look forward to YOU taking corrective action. Thank you for your time and consideration in this matter.

Sincerely,

**LAW OFFICES OF RONALD A. MARRON**

/s/ Ronald A. Marron  
RONALD A. MARRON

*Counsel for Eunice Johnson,  
and all others similarly situated*